



Fall 2012

NIABA NEWS

Men and women sharing a common heritage in a chosen profession

VIVA LAS VEGAS



Peter Balistreri (Milwaukee, WI); Dino Mazzone (Quebec, Canada); Court Commissioner Joseph Frinzi (Milwaukee); Anthony Gianfrancesco (North Providence, RI)

By Frank Schiro
NIABA President

The NIABA Board met in Las Vegas, Nevada on June 1st and 2nd, 2012, graciously hosted by Attorney **Dominic Gentile** who permitted our board to meet in his law office conference room at the law firm of Gordon & Silver, 3960 Howard Hughes Parkway, Las Vegas, NV 89169, not far from Caesar's Palace, where the board members were provided VIP accommodations thanks to our fellow board member, **Judge Paul Victor**, and his connection with Rao's restaurant located at Caesar's Palace.

Attorney Gentile also provided a gracious luncheon on Friday during the Board Meeting for which our board is grateful for his generous contributions and presents to our organization.

On Saturday afternoon after our morning board meeting we were invited and joined some local Italian American attorneys along with Dominic Gentile to honor a senior attorney and former mentor to attorney Gentile, attorney George E. Graziadei. NIABA presented him with a certificate of appreciation for lifetime accomplishment for which he was very grateful.

We also dined at the famous Rao's restaurant located in Caesar's Palace and were hosted and greeted by the owner whose family was associated with the original Rao's in Harlem, New York still famous as a testament to fine Italian cooking.

The board meetings were productive which resulted in motions passed to renew the one year contract for our administrative assistant, Dana Robb, in Milwaukee, WI, who has been extremely helpful in the early stages of our relationship, including but not limited to producing one of the best newsletters thus far published as so expressed by our immediate past president, **Anthony Gianfrancesco**, from Rhode Island.

Also confirmed at the board meetings was a bylaw amendment concerning classes of membership which was passed by the board allowing newly admitted Italian American lawyers to join NIABA without dues for one year. The amendment passed by unanimous vote. This bylaw change parallels a similar provision in the American Bar Association bylaws. Therefore, it allows any Italian American law student who has been admitted to a bar to practice law to join NIABA for the first year without paying dues.

The board also learned from communications from **Professor Malloy** from Syracuse University Law School that Volume 19 of the NIABA Digest is in print and mailed out and that Volume 20 will be published in a timely fashion.

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Spring Meeting

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At said meeting brother **Ray Dettore** from Rhode Island reported that he attended as OSIA National Trustee but also on behalf of representing NIABA the May 23, 2012 NELA (the National Educator's Leadership Awards) annual function hosted by the Supreme Lodge of Order Sons of Italy in America wherein for the first time NIABA has joined hands together with National OSIA in a joint scholarship award in the total amount of \$5000 to an Italian American law student. This year Nicholas Bruno of the University of Texas was the selected recipient.

Additionally, **Joseph Sena** reported that he will be setting up a CLE seminar on recent developments in immigration law post *Padilla vs. Kentucky* and that such seminar will be put forth as a joint venture with NIAF for our next board meeting which will be venued in Washington D.C. on the dates of October 12th and 13th, 2012. It is noted that many of our board members are recommended and suggested to arrive in Washington, D.C. on Thursday, October 11, 2012 so as to be present timely for the CLE presentation currently scheduled as the kick-off event for the NIAF Gala

Weekend scheduled for 10 a.m. on Friday at the Washington Hilton.

All are encouraged to come and bring guests. Finally, fellow board member brother Joseph Cannavo accepted the task to reach out to his former city of residence, St. Louis, Missouri, to connect with Italian American lawyers there in an effort to resurrect an affiliate lodge and recruit members for NIABA. Further, Anthony Gianfrancesco is pursuing additional contact and follow-up with the Connecticut Italian American Bar Association which is being resurrected with the help of Attorney Frances Donnarumma, who many board members met last October, 2011 at the NIAF event in Washington, D.C. and were excited about the resurrection of that organization and their relationship with NIABA.

Brief mention was made to the prospect of possibly having a winter meeting in Atlanta, GA, depending upon the facilitation of such an event by a delegate to our board, Thomas Mazziotti, who hails from the Atlanta, GA area.

Members Welcome!

Fall Meeting Includes Panel Discussion, Wine Tasting

The NIABA Board of Directors will meet on October 12 & 13 in Washington, DC, in conjunction with the National Italian American Foundation's (NIAF) Anniversary Gala.

As part of the Gala event, NIABA is also co-sponsoring a panel discussion titled *Recent Developments in U.S. Immigration Law*. The program will be held from 10-11:30 a.m. on Friday, October 12. Panelists will include NIABA Board member Attorney **Joseph Sena** – who specializes in immigration law throughout the country, Mr. John Morton – U.S. Director of the Department of Immigration and Customs Enforcement, and Attorney Francesco Isgro of the U.S. Immigration Litigation Office. The discussion is free, and open to the public.

Also on Friday, NIABA will host a Tasting of Wines and Delacies of Calabria. From 4-6 p.m., you are invited to explore the grapes and sample the foods that are native to this region, located at the "toe" of the Italian Peninsula.

For more information on the NIAF Gala, visit the website at www.niaf.org. If you have question about the NIABA events, contact President Frank Schiro at 414-271-7776 or fschiro@gmail.com.



NIAAF

NIAAF & NIABA Present

Recent Developments in U.S. Immigration Law

**Enjoy a panel discussion on recent
immigration issues and developments**

**Friday, October 12th, 2012
10 a.m. – 11:30 a.m.**

**Georgetown West – Concourse
Level**

This free event is open to the public

Affiliate Highlights

Rhode Island Chapter (Justinian Law Society)



Denise Lombardo Myers, Pres., RI Superior Court Judge Fortunato, RI Supreme Court Judge Robinson, Chef Iannuccilli and Chief Judge (ret.) Frank Williams.

The Rhode Island chapter planned a variety of social and education events for 2011-2012, starting with our installation of officers in October of 2011, at which time the Justinian Law Society also awarded a public service award to Attorney Joyce Faralone.

The annual Christmas Party reached capacity crowd to honor its past president and the 2011 Distinguished Service Award recipient: Attorney **Valentino Lombardi**. After a delicious 5-course meal at the Italo American Club, guests heard from Magistrate Judge Montalbano about the years of volunteer service made to numerous organizations by Lombardi, his friend. As Judge Montalbano and Chief Judge Williams (ret.) presented the award, guests learned of Lombardi's dedicated service to all Rhode Islanders who sought his as-

sistance on matters related to the Department of Labor. Within the capacity crowd were distinguished judges, Justinian members and the entire legal department at the Rhode Island Department. In addition, two framed prints of the mosaic of Justinian were generously donated and raffled off to guests by NIABA past president **Ray Pacia**.

On March 12th at the Italo-American Grill in North Providence, members gathered for a special program combining legal education credits and a cooking demonstration of 3 courses by Chef Iannuccilli and Chief Justice Williams. In addition to copies of Supreme Court cases, guests also received copies of the recipes used by the chefs. The program was related to the 2012 Presidential race: Justice Robinson spoke on the 1st Amendment and privacy rights and the 2010 decision:

Citizens United v. Federal Election Commission. After the entrée was prepared, Judge Fortunato spoke on access to the press, the right of assembly and what is protected speech. After Justice Williams prepared his blackberry wine torte, the guests learned about the ethical obligations owed to clients who are groups, and a lawyers' duty under the 5th amendment.

In late spring, the Justinians hosted another CLE on the obligations of attorneys to

consider a Medicare Set Aside Agreement when settling civil claims. Attorney Michael Civilotto was the speaker.

On June 22nd, the Justinian Law Society again hosted the Charles Pisaturo bocce tournament. At that time, the annual awards to the 2011 and 2012 scholarship recipients for law students were presented and winners were invited to play a round of bocce with our members.

Denise Lombardo Myers

* * *

Connecticut Italian American Bar Association



The Connecticut Italian American Bar Association was recently restarted after a long lapse of activity. CIABA President Francis D'Annarummo, Anthony Gianfrancesco, Roy DeBarbieri and Judge Richard Marano attended the inaugural meeting in May.

We Need Your Email Address

If you received a hard copy of this newsletter in the mail, it may mean we do not have your current email address. Please help us, help yourself, and help the environment by providing that contact information to NIABA Administrator Dana Robb at dana@barefoot-marketing.com.

Not only will we save the cost of printing and mailing, as well as the environmental resources, you'll also get your newsletter sooner and be able to take better advantage of the information and resources we offer in each issue.

JURY'S OUT



By Joseph F DeFelice

Alas said the foreman
It's time to decide,
That lawyer was sharp
And very wise

Oh yes pronounced another
So intuitive was he,
And kind can't you see?
His cause seemed so just
that is what I surely see

A third juror spoke up
And she declared,
Oh yes, I saw sincerity
In that lawyer's eyes,
A man you can trust
So clear to me

Alas said another
I am confused,
Which way should we turn?
Should the vote be yes?
Or should it be no?

Outside paced the lawyer
In the empty hallway so dim,
Walking up and down
And round and around

Inside to the courtroom
The lawyer paced,
As he looked to the clerk with
a worried face,
Has there been a question?
Did they send a note?

Oh no said the clerk
The jury is torn,
Who knows which way
This jury will turn

Joseph F DeFelice is an attorney in Kew Gardens, NY, handling criminal and immigration matters and appeals.

WELCOME NEW NIABA MEMBERS

Welcome to the following members, who've joined NIABA in recent months.

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National Italian American Bar Association - Application for Membership

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FOREIGN CORRUPT PRACTICES ACT IS 'SWORD OF DAMOCLES,' CRITIC SAYS

By Michael P. Tremoglie

Violations of the Foreign Corrupt Practices Act have been expanded to include not only what actual bribes are known to be paid but what bribes a business owner or executive "should have known" were being made.

This has some observers keeping watch over what cases the Justice Department prosecutes.

"This law is a sword of Damocles hanging over the head of anyone doing business in a foreign country," said Bill Frezza, a fellow at the Competitive Enterprise Institute. "You are subject to political and capricious enforcement attempts to govern the behavior of people and governments in foreign countries."

Frezza observed that normally when doing business in a foreign country a company has to have an in-country salesman. This salesperson probably earns a commission.

"What is the standard for what you should have known?" Frezza asked. "How do you do a proper investigation when the U.S. cannot compel discovery from foreigner countries? Any

defense will be lacking if a proper discovery of evidence cannot be obtained."

Assistant Attorney General Lanny A. Breuer said late last year that he is open to amending corruption laws, but will not agree to what he perceives as attempts to weaken the Foreign Corrupt Practices Act.

Speaking at the 26th National Conference on the Foreign Corrupt Practices Act (FCPA) in Washington, Breuer said, "I am aware that there have been a number of efforts made this year to amend the FCPA, by the Chamber of Commerce and others. We in the Justice Department are always open - and I personally am - to working with Congress on ways to improve our criminal laws.

"That said, I want to be clear about one thing with respect to these proposals: we have no intention whatsoever of supporting reforms whose aim is to weaken the FCPA and make it a less effective tool for fighting foreign bribery."

Breuer is no stranger to controversy. In December 2011, Sen. Chuck Grassley (R.-Iowa) called for Breuer's resignation, outraged because

Breuer allegedly deceived Congress about his knowledge of the "Fast and Furious" gun walking program.

"This was a shocking revelation..." Grassley said. "The Justice Department had publicly denied to Congress that ATF would ever walk guns. Yet, the head of the Criminal Division, Mr. Breuer, knew otherwise and said nothing."

Ronald D. Rotunda, a law professor at Chapman University Law School, Orange, Calif., said the original concern with FCPA had to do with protecting investors.

"Companies could be extorted by the foreign officials. The companies are victims not criminals," he said.

"If I am an investor in a company that has all these foreign contracts, I think it is because of savvy business but actually, it is because of bribery. The purpose of the law is to prevent misleading investors. There is logic to that. Investors want to know if an American company is obtaining business because it has a better product. That is not necessarily true if it is obtaining business by bribing the son-in-law of the local dictator."

Regarding the "should have known" FCPA prosecutions, Rotunda said, "Bribery is a criminal violation and that requires intent. What we do not want is willful blindness - the corporation's higher

ups averting their eyes and not asking questions because they do not want to hear the answers.

"The corporation does not have necessary intent if the members of control group - the high level corporate officers - do not know what is going on because a low-level official who paid the bribe kept the crucial information from the higher-ups.

"The Government has to show a corrupt intent to commit a crime in order to prosecute bribery."

Rotunda provided an example of willful blindness, "Suppose a company that had no business from South Parador now finds it has a lot of government contracts after they hire an individual who has a lot of contacts with relatives of the local dictator.

"Suppose this individual asks for reimbursements for expenses but does not provide any receipts. If the high-level company executives say they do not want to ask because they do not want to know the answer, that is willful blindness."

But this is not what necessarily happens when the government prosecutes using a more lenient, "should have known" standard, Rotunda said.

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Bill Frezza

THE FIGHTING JUDGE MICHAEL MUSMANNO

By Karen Ferrick-Roman

During his colorful and significant life, Michael Angelo Musmanno was a force to be reckoned with as a lawyer, legislator, judge and author. The first Italian American to serve on the Pennsylvania State Supreme Court, he also served on three Nuremberg tribunals; volunteered to defend Sacco and Vanzetti; served two terms in the Pennsylvania legislature (campaigning through cardboard stand-ins while he served overseas); and was a tireless defender of democracy and his Italian heritage.



As Chief Judge, Musmanno (R) presided over three Nuremberg trials after WW II.

The Early Years

Musmanno lived life to the fullest between his birth in 1897 and his death in 1968, with much of it documented by books, papers and photos in the archives at Duquesne University in Pittsburgh. Governed by an over-the-top work ethic, his moral compass was formed by his immigrant parents and the mistreatment of workers he witnessed as a child.

One of nine children, he grew up in hardscrabble Stowe Township outside Pittsburgh, raised in a house built by his father. His mother died in an oil lamp explosion at home when he was eight and he later joined his father in the coal mines.

Eventually, he received an education, earning seven degrees, starting with the American University and Washington College. He enlisted to fight in World War I, but the Armistice was signed the day he was to sail. In 1922, after

earning his law degree from Georgetown University in Washington, D.C., he became a trial lawyer, but shuttered his practice after reading of the circus that the Sacco and Vanzetti trial had become in Massachusetts.

For nearly seven years, as a volunteer with the defense, he struggled to keep the two philosopher-immigrants alive; convinced they were being tried for their radical politics instead of murder. Musmanno's faith in justice was shaken when he was unable to save them from the electric chair. Disheartened, he left to study criminology at the University of Rome. His familiarity with the city became critical in World War II.

Wartime Service

Musmanno enlisted in the Navy during the war, rising to the rank of rear admiral. Twice decorated for his

wounds, he received the Navy Expert Pistol Shot Medal and others, including the Italian Bronze Cross for Military Valor. During the 1943 Allied invasion of Europe, Musmanno was chosen as an aide to Gen. Mark Clark, the Allied commander in Italy, and served for six months as the Allied governor of Sorrento, south of Naples, where port records indicate his family had lived before emigrating.

Later, as part of a Navy team charged with determining that Hitler was really dead, Musmanno interviewed 200-plus Nazis, from generals to barbers, including the parents of Hitler's mistress, Eva Braun. In the 1950s, he turned these experiences into a book that became the movie, *The Last Ten Days*.

He also investigated the Nazi death camps, an experience that would inform his role in the trial of Adolf Eichmann,

who set the extermination of Jews in motion. In 1946, he led the U.S. Board of Forcible Repatriation in Austria, saving an estimated 5,000 people from Siberian exile or execution by opposing the repatriation of those who did not want to return to Communist countries.

In 1947, he was appointed by President Truman as a Nuremberg trial judge, and presided over the year-long *Einsatzgruppen* case, which the Associated Press called "the biggest murder trial in history." All 24 Nazi officers charged with slaying one million Polish Christians, Jews and other civilians were found guilty. He also was a member of the court on two later Nuremberg trials. His decisions have become incorporated into international law.

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The Fighting Judge

Continued from page 8

Home Again

Returning stateside, as a Pennsylvania legislator, his efforts disbanded the private Coal and Iron Police, hired by the mining companies, whose brutality targeted Italian and Eastern European immigrants. He went down into the mines himself and later wrote about a real-life incident in 1929 in which a striking coal miner was beaten to death by these union-busting thugs. Hollywood turned it into the movie, *Black Fury*.

Before going to war, he had risen to the bench in 1934, where he served for 36 years. In 1952, he became the first Italian-American to serve on the Pennsylvania State Supreme Court, a post he held for 16 years until his death in 1968. Authoring proposed constitutional amendments, he also wrote 16 books, consulted for Hollywood movies, spoke at the first organizing rally of U.S. Steel Workers, and battled the threat of communism.

The Red Menace

In the 1950s, Musmanno's boundless energy was riveted on communism. He recommended that communists be imprisoned and that the Cincinnati Reds change their name. He also co-authored the Communist Control Act of 1954 with Lyndon Johnson and Hubert Humphrey that outlawed the Communist Party in the U.S.

In 1961, he was invited to Israel as a prosecution witness in the Eichmann trial. Musmanno overrode his attorney's advice, testifying that his

previous interviews with Luftwaffe leader Hermann Goering, Nazi propagandist Joseph Goebbels and others said Eichmann determined who should die and when. "Not to have prosecuted (him) would have been to commit an unforgivable offense against the sanctity of the human race," he wrote in his book, *The Verdicts Were Just*.

Appointed by President Kennedy to the Commission on International Rules of Judicial Procedure, Musmanno gave testimony in Frankfurt, Germany in 1965 that helped to convict the men who ran Auschwitz.

Viva Columbus!

Musmanno was an ardent supporter of Columbus as the first European in America. "He led the Columbus Day parade all the time," remembers Eugene Fischione, 91, who worked in the camera department of Pittsburgh's Kaufmann's store and came to know Musmanno through his love of photography.

In his chambers, the workaholic justice wore his soft gray wool Italian paratrooper jumpsuit and was ready to chat. "He was easy to talk to. He didn't pretend to be a big shot," said Fischione.

Musmanno received the highest award of merit from the Italian Historical Society of America in 1966. Two years later, he died in his sleep on Columbus Day and is buried in Arlington Cemetery. Intensely proud of his Italian heritage, Musmanno traced his ancestry to the Lombards who invaded northern Italy

in the 6th century and Garibaldi forces that freed southern and central Italy.

"I believe that those of Italian descent have a rich heritage and they should preserve their racial characteristics, which embrace a love and veneration of the best in art, music, literature and science. It is something to feel oneself a part of an ethnological group which produces a Columbus, a Marconi, a Michelangelo and a Leonardo da Vinci. But while this ethnological veneration is praiseworthy and, to the extent I have indicated, even beneficial, I dislike the thought of too much racial isolation and segmentation. ... all these qualities should

be used enthusiastically, energetically and completely for America; and in that manner, they become the best of Americans.

"After all," he wrote, "it is what a man does today that counts."

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IITH CIRCUIT GIVEN QUESTION OF FCPA 'INSTRUMENTALITY' DEFINITION

A case before the U.S. Court of Appeals for the 11th Circuit could decide the meaning of "foreign official" and "instrumentality" as two Florida men seek to overturn their 2011 convictions for bribing Haitian officials in violation of the Federal Corrupt Practices Act (FCPA).

But standing in the way of appellants Joel Esquenazi and Carlos Rodriguez is the U.S. Justice Department which argues in an Aug. 21 response brief that the men are wrong in their narrow interpretation of the terms.

For their roles in authorizing bribes to officials at Haiti Teleco (land line telephone service), Esquenazi received a 15-year sentence and Rodriguez a seven-year sentence after being convicted of one count of conspiracy to violate the FCPA and wire fraud; seven substantive counts of FCPA violations; one count of money laundering conspiracy; and 12 counts of money laundering.

According to the DOJ, the defendants participated in a scheme to commit foreign bribery and money laundering from November 2001 through March 2005, during which time the telecommunications company paid more than \$890,000 to shell companies to be used for bribes to Teleco officials. Esquenazi and Rodriguez authorized these bribe payments to successive directors of international relations at Teleco.

Their appeal has been termed "historic" by Professor Mi-

chael Koehler of Southern Illinois University School of Law, who blogs at FCPA Professor. It will be the first time an appellate court will rule on the meaning of the terms foreign official and instrumentality.

The issue is whether the meaning of the terms - which are contained but not defined in the FCPA - should be defined legislatively or whether the definitions of the DOJ's enforcement and case law continue to be used.

Koehler wrote a declaration in support of the motion by Esquenazi and Rodriguez to dismiss counts one through 10 of the indictment.

He said that "The FCPA defines 'foreign official,' as 'any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or of a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.'"

But Koehler noted in his declaration that the FCPA does not define the terms "department," "agency," or "instrumentality." Indeed, he says the definition has been left to the Justice Department, which has included employees of government owned entities.

This he says is "the functional and substantive equivalent of

the DOJ alleging that General Motors Co. or American International Group Inc. is an



Professor Michael Koehler

'instrumentality' of the U.S. government (given its ownership interests in these companies) and that all GM and AIG employees are therefore U.S. 'officials.'"

The DOJ's response noted that "Defendants first raised their 'instrumentality' claim in a pre-trial motion to dismiss the indictment, and the district court denied it...The court concluded that 'the plain language of [the FCPA] and the plain meaning of [instrumentality] show that as the facts are alleged in the indictment Haiti Teleco could be an instrumentality of the Haitian government' and that the indictment 'sufficiently alleged that Antoine and Duperval (Haitian officials) were foreign officials by alleging that these individuals were directors in the state-owned Haiti Teleco.'"

The DOJ also rejected defendants' argument that the phrase, 'department, agency,

or instrumentality" in the definition of "foreign official" is unconstitutionally vague.

Regarding Koehler's declaration, the DOJ said, "Defendants rely on a 144-page declaration by Professor Michael J. Koehler that was filed on behalf of the defendants in CarsonAlthough defendants suggest that this Court may take judicial notice of the declaration because it relates to legislative history, the declaration selectively reviews the legislative history and draws inferences in support of a defense motion to dismiss the indictment.

"As such, it is not necessarily the statement of a disinterested expert, it was not reviewed as a scholarly article, and it was never subject to impeachment in the case below. Even the district court in Carson did not rely on the declaration because it concluded that 'resort to the legislative history of the FCPA [was] unnecessary.'

"If the Court is inclined to consider the Koehler affidavit, the government asks the Court to similarly consider the declaration of FBI Special Agent Brian Smith, also filed in Carson, that discusses references to SOEs in the legislative history."

All of this reveals some of the problems involved in the enforcement of the FCPA. For its part, the DOJ, in its response brief, claims the appellants are defining the term public official too narrowly.

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Jay Shapiro, an attorney for the New York office of White and Williams, a former prosecutor with the Bronx and Brooklyn District Attorney's office who is currently involved in commercial litigation, believes the DOJ will prevail in the appeal case.

"The problem is there is no definition of instrumentality," Shapiro said. "The government does a good job addressing the controversy in its reply to the Esquenazi appeal. But this is such a new area.

"Also, clarity is needed in terms of how the statute fits. It currently fits the governmental practices of the United States. It does not necessarily fit the structure of foreign governments and their practices. If you go to a foreign country as I did recently to talk about these issues you understand this."

Shapiro also said that companies that do business abroad already know about understanding and coping with foreign laws and foreign business practices.

He said the idea is to help foreign countries create the conditions where bribery would be less of a factor. But, he said, we also need to more clearly define the terms of the FCPA and how the statute is enforced.

American law needs to be able to define it more strictly, he said.

Lucinda A. Low, a partner with the Washington D.C. law firm of Steptoe and Johnson and the head of its FCPA practice, does not believe

that American businesses are reluctant to enter foreign markets because of the FCPA.

"To be precise, the statute does define the term foreign official, it does not define the term instrumentality," she said. "The ambiguity (that) tends to give rise to litigation is with regard to state enterprises - as to whether they are an instrumentality. That has been historically the case."

Low is a member of the American Society of International Law, and that group's former vice president.

"I do not think there is any empirical evidence that American businesses are reluctant to go into developing countries," she said. "I do a lot of work for American businesses in the extractive industries. They know they have to be more cautious."

Historically, she noted, there was the concern that the U.S. was acting unilaterally and that the FCPA was imposing an undue burden to businesses operating overseas. She observed that there are still concerns that the FCPA sweeps too broadly. This debate has been rekindled because of the increased enforcement in recent years.

James C. Dunlop, an attorney with Jones Day in Chicago, represents companies and individuals in criminal enforcement matters. He also counsels and conducts internal investigations for companies concerned about foreign corrupt practices.

He said that the FCPA was designed to create a level

playing field for companies abroad. He does not think the law is primarily enforced for foreign policy reasons. He said that other countries are developing statutes and there is starting to be a conversion to a global corruption standard. He too thinks the FCPA terms need clarification.

"Without commenting on any specific case, defining the term instrumentality and the interpretation of the term foreign official are valid issues," Dunlop said.

"The Justice Department definition has been expanded to mean even where there is less than 25 percent of government ownership the employees are foreign officials. This makes anybody who is an employee of the entity a foreign official including the janitor. You do not have to be in management.

"While I think it is appropriate for the American government not wanting to foster corruption and to take steps to eliminate and prosecute it,

I take issue with current interpretations of the act by the DOJ. I have called on Congress to amend the act."

He observed that companies are confused and find the current interpretations of the FCPA by the government disconcerting. He made it very clear though that he believes that American businesses should not "take our foreign markets as we find them." But the government should make compliance easy.

"I have known companies that leave a market because of the problems with enforcement," Dunlop said. "I do not subscribe to the view that we should take our foreign markets as we find them. I think it is beneficial overall for American companies to operate in a way to promote transparency. But we have to make it easy for companies to do this. I think the DOJ should set a standard for compliance by issuing some guidance."

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NIABA Offers Free One-Year Membership for New Lawyers

At the NIABA Board of Director's spring meeting, a bylaw amendment was enacted to make membership more accessible to new attorneys.

Italian American lawyers are invited to join NIABA without dues for one year after their admission to the bar. This bylaw change parallels a similar provision in the American Bar Association bylaws.

Since its founding in 1983, NIABA has worked to advance the interests of the Italian-American legal community and to improve the administration of justice. Including the voices of our newest attorneys serves to further this mission with diversity and energy.

NIABA MEMBERS VISIT AT MAY MEETING IN LAS VEGAS



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